IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1265 OF 2005

ALONGWITH

CRIMINAL APPLICATION NO. 458 OF 2006

AND ALONGWITH

CRIMINAL APPLICATION NO. 485 OF 2006

Sudhakar Bhojaya Shetty ... Petitioner

V/s.

Home Minister, Govt. of Maharashtra & Ors. ... Respondents

Mr. S. A. Tawate for the petitioner.

Mr. S. R. Borulkar, PP with Mr. D. S. Mhaispurkar, APP for the State.

CORAM : SMT. RANJANA DESAI & ANOOP V. MOHTA,JJ.

DATED : 16th January, 2007

P.C.

In this petition, the petitioner is seeking a direction to respondent 1 to register FIR against respondent 2 under Section 217 and 218 of the Indian Penal Code and under the Prevention of Corruption Act.

2 . Shortly stated the petitioner's case appears to be that respondent 2 has knowingly and intentionally neglected the investigation of complaint lodged by the petitioner being C. R. No. 53 of 2003, registered at Nalasopara Police Station. On 13/09/2006, this

Court had expressed that the Director General of Anti Corruption Bureau should examine the allegations in the petition and state before the court as to what steps the department proposes to take for conducting an inquiry to verify the allegations made by the petitioner against the concerned Police Officer, and thereafter the State of Maharashtra should satisfy this court after conducting the inquiry through the Director, Anti Corruption Bureau and then submit report to this Court. Accordingly the inquiry has been conducted and report dated 17/11/2006 is submitted in this Court. We have taken it on record. Learned PP has given copy thereof to the petitioner's counsel. We are informed that the police have after carrying out investigation in connection with the C. R. No. 53/2003 submitted before the learned Magistrate application for grant of B Summary.

3. Our attention is drawn to the order dated 17/08/2005 passed by the Division Bench of this court headed by Justice D. G. Deshpande in Criminal Application No. 1667 of 2004, in Criminal Writ Petition No. 901 of 2002 filed by the petitioner. By the said order, this court had directed that after the B summary is filed before passing any final order the

Magistrate should issue notice to the respondent through his advocate Mr. S. A. Tawate. We are informed that accordingly the court has served the necessary notice. The learned Magistrate has however, not passed any order on the application.

4. In the circumstances of the case, we direct the learned Magistrate to pass appropriate order on the application filed by the police for grant of B summary after hearing the petitioner's counsel in accordance with law. The report submitted pursuant to this court's order dated 13/09/2006 may be tendered before the learned Magistrate for information and copy thereof be served on the learned counsel for the petitioner. Petitioner will be at liberty to make submission if necessary on the said report. Several allegations are made in this petition about the conduct of respondent 2. Since the learned Magistrate has yet to pass his order on the application for grant of B summary, we are not inclined to express any opinion on those allegations because we feel that any expression of opinion by us at this time may influence the learned Magistrate who is yet to pass the order. We, therefore, dispose of the petition with above directions. We again clarify that so far as the

allegations made against respondent 2 are concerned, we have not expressed any opinion either way and at appropriate time if the law permits, the petitioner can agitate the said grievance.

5. So far as the Criminal Application No. 458 of 2006 is concerned, since the Writ Petition is disposed of, the learned counsel for the petitioner seeks to withdraw it as it has becomes infructuous. Permission is granted. Criminal Application No. 458 of 2006 is allowed to be withdrawn and is disposed of as such.

6. In Criminal Application No. 485 of 2006, the petitioner has prayed for transfer of the inquiry to the C.B.I. from Director General of Anti Corruption Bureau Worli, Mumbai. It appears that the inquiry has been conducted by the officer, appointed by the Director General of Anti Corruption Bureau, Worli, Mumbai under the order of this Court. We find that the report is dated 17/11/2006 i.e. prior to the application for transfer filed by the petitioner. The application of transfer is filed on 23/11/2006. Therefore, on this application no order of transfer

can be passed by us. This application has become infructuous and is disposed of as such.

7. Needless to say that it is always open to the petitioner to challenge the report dated 17/11/2006. Petition and the applications are disposed of in the aforestated terms.

[SMT.RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]